

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,

Plaintiff,

v.

**Yee Fung Toy Family
Association,** a California Nonprofit
Corporation;
House Of Dim Sum Inc., a
California Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of Yee Fung Toy Family Association, a California Nonprofit Corporation; House Of Dim Sum Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.

2. Defendant Yee Fung Toy Family Association owned the real property located at or about 735 Jackson St, San Francisco, California, in July 2021.

1 3. Defendant Yee Fung Toy Family Association owns the real property
2 located at or about 735 Jackson St, San Francisco, California, currently.

3 4. Defendant House Of Dim Sum Inc. owned House of Dim Sum located
4 at or about 735 Jackson St, San Francisco, California, in July 2021.

5 5. Defendant House Of Dim Sum Inc. owns House of Dim Sum
6 (“Restaurant”) located at or about 735 Jackson St, San Francisco, California,
7 currently.

8 6. Plaintiff does not know the true names of Defendants, their business
9 capacities, their ownership connection to the property and business, or their
10 relative responsibilities in causing the access violations herein complained of,
11 and alleges a joint venture and common enterprise by all such Defendants.
12 Plaintiff is informed and believes that each of the Defendants herein is
13 responsible in some capacity for the events herein alleged, or is a necessary
14 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
15 the true names, capacities, connections, and responsibilities of the Defendants
16 are ascertained.

17
18 **JURISDICTION & VENUE:**

19 7. The Court has subject matter jurisdiction over the action pursuant to 28
20 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
21 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22 8. Pursuant to supplemental jurisdiction, an attendant and related cause
23 of action, arising from the same nucleus of operative facts and arising out of
24 the same transactions, is also brought under California’s Unruh Civil Rights
25 Act, which act expressly incorporates the Americans with Disabilities Act.

26 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
27 founded on the fact that the real property which is the subject of this action is
28 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to the Restaurant in July 2021 with the intention to avail himself of its goods or services motivated in part to determine if the defendants comply with the disability access laws. Not only did Plaintiff personally encounter the unlawful barriers in July 2021, but he wanted to return and patronize the business again but was specifically deterred due to his actual personal knowledge of the barriers gleaned from his encounter with them.

11. The Restaurant is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the date of the plaintiff's visit, the defendants failed to provide wheelchair accessible paths of travel in conformance with the ADA Standards as it relates to wheelchair users like the plaintiff.

13. The Restaurant provides paths of travel to its customers but fails to provide any wheelchair accessible paths of travel.

14. A couple of problems that plaintiff encountered was that the ramp that runs up to the entrance did not have a level landing. What is more, the ramp had a slope of about 10.2%.

15. Plaintiff believes that there are other features of the paths of travel that likely fail to comply with the ADA Standards and seeks to have fully compliant paths of travel available for wheelchair users.

16. On information and belief, the defendants currently fail to provide wheelchair accessible paths of travel.

17. Additionally, on the date of the plaintiff's visit, the defendants failed to provide accessible entrance door hardware in conformance with the ADA Standards as it relates to users like the plaintiff.

18. The Restaurant provides door hardware to its customers but fails to provide accessible entrance door hardware.

1 19. A problem that plaintiff encountered was that the entrance door
2 hardware had a pull bar style handle that required tight grasping to operate.

3 20. Plaintiff believes that there are other features of the door hardware that
4 likely fail to comply with the ADA Standards and seeks to have fully compliant
5 door hardware.

6 21. On information and belief, the defendants currently fail to provide
7 accessible door hardware.

8 22. These barriers relate to and impact the plaintiff's disability. Plaintiff
9 personally encountered these barriers.

10 23. As a wheelchair user, the plaintiff benefits from and is entitled to use
11 wheelchair accessible facilities. By failing to provide accessible facilities, the
12 defendants denied the plaintiff full and equal access.

13 24. The failure to provide accessible facilities created difficulty and
14 discomfort for the Plaintiff.

15 25. Even though the plaintiff did not confront the following barriers, the
16 designated pick-up/mobile orders service counters and sales counters are too
17 high. There is no counter that is 36 inches or less in height that a wheelchair
18 user can use for service and transactions. Plaintiff seeks to have these barriers
19 removed as they relate to and impact his disability.

20 26. The defendants have failed to maintain in working and useable
21 conditions those features required to provide ready access to persons with
22 disabilities.

23 27. The barriers identified above are easily removed without much
24 difficulty or expense. They are the types of barriers identified by the
25 Department of Justice as presumably readily achievable to remove and, in fact,
26 these barriers are readily achievable to remove. Moreover, there are numerous
27 alternative accommodations that could be made to provide a greater level of
28 access if complete removal were not achievable.

1 28. Plaintiff will return to the Restaurant to avail himself of its goods or
2 services and to determine compliance with the disability access laws once it is
3 represented to him that the Restaurant and its facilities are accessible. Plaintiff
4 is currently deterred from doing so because of his knowledge of the existing
5 barriers and his uncertainty about the existence of yet other barriers on the
6 site. If the barriers are not removed, the plaintiff will face unlawful and
7 discriminatory barriers again.

8 29. Given the obvious and blatant nature of the barriers and violations
9 alleged herein, the plaintiff alleges, on information and belief, that there are
10 other violations and barriers on the site that relate to his disability. Plaintiff will
11 amend the complaint, to provide proper notice regarding the scope of this
12 lawsuit, once he conducts a site inspection. However, please be on notice that
13 the plaintiff seeks to have all barriers related to his disability remedied. See
14 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
15 encounters one barrier at a site, he can sue to have all barriers that relate to his
16 disability removed regardless of whether he personally encountered them).

17
18 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
19 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
20 Defendants.) (42 U.S.C. section 12101, et seq.)

21 30. Plaintiff re-pleads and incorporates by reference, as if fully set forth
22 again herein, the allegations contained in all prior paragraphs of this
23 complaint.

24 31. Under the ADA, it is an act of discrimination to fail to ensure that the
25 privileges, advantages, accommodations, facilities, goods and services of any
26 place of public accommodation is offered on a full and equal basis by anyone
27 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
28 § 12182(a). Discrimination is defined, inter alia, as follows:

- a. A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

32. When a business provides paths of travel, it must provide accessible paths of travel.

33. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

34. When a business provides door hardware, it must provide accessible door hardware.

35. Here, accessible door hardware has not been provided in conformance with the ADA Standards.

36. When a business provides service and sales counters, it must provide accessible service and sales counters.

37. Here, accessible service and sales counters have not been provided in

1 conformance with the ADA Standards.

2 38. The Safe Harbor provisions of the 2010 Standards are not applicable
3 here because the conditions challenged in this lawsuit do not comply with the
4 1991 Standards.

5 39. A public accommodation must maintain in operable working condition
6 those features of its facilities and equipment that are required to be readily
7 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

8 40. Here, the failure to ensure that the accessible facilities were available
9 and ready to be used by the plaintiff is a violation of the law.

10
11 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
12 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
13 Code § 51-53.)

14 41. Plaintiff repleads and incorporates by reference, as if fully set forth
15 again herein, the allegations contained in all prior paragraphs of this
16 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
17 that persons with disabilities are entitled to full and equal accommodations,
18 advantages, facilities, privileges, or services in all business establishment of
19 every kind whatsoever within the jurisdiction of the State of California. Cal.
20 Civ. Code §51(b).

21 42. The Unruh Act provides that a violation of the ADA is a violation of the
22 Unruh Act. Cal. Civ. Code, § 51(f).

23 43. Defendants’ acts and omissions, as herein alleged, have violated the
24 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
25 rights to full and equal use of the accommodations, advantages, facilities,
26 privileges, or services offered.

27 44. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
28 discomfort or embarrassment for the plaintiff, the defendants are also each

1 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
2 (c).)

3
4 **PRAYER:**

5 Wherefore, Plaintiff prays that this Court award damages and provide
6 relief as follows:

7 1. For injunctive relief, compelling Defendants to comply with the
8 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
9 plaintiff is not invoking section 55 of the California Civil Code and is not
10 seeking injunctive relief under the Disabled Persons Act at all.

11 2. For equitable nominal damages for violation of the ADA. See
12 Uzuegbunam v. Preczewski, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
13 and any other equitable relief the Court sees fit to grant.

14 3. Damages under the Unruh Civil Rights Act, which provides for actual
15 damages and a statutory minimum of \$4,000 for each offense.

16 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
17 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

18
19 Dated: August 26, 2021

CENTER FOR DISABILITY ACCESS

20
21
22 By: _____



23 Amanda Seabock, Esq.
24 Attorney for plaintiff
25
26
27
28